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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,659	02/12/2002	Brian Yolles	36861-00002	6313
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EXAMINER TINKLER, MURIEL S				
ART UNIT 3691		PAPER NUMBER		
MAIL DATE 05/27/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/074,659

Applicant(s)

YOLLES, BRIAN

Examiner

MURIEL TINKLER

Art Unit

3691

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on March 23, 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This application has been reviewed. The status of the claims are as follows: claims 1-29 were previously pending; claims 1, 4, 5, 7, 20, 28 and 29 have been amended; claim 6 has been cancelled; Therefore, claims 1-5 and 7-29 are currently pending. The rejection(s) are as follows.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 6, 2009 has been entered.

Response to Amendment

2. The Examiner has reviewed the amendments to claims 1, 4, 5, 7, 20, 28 and 29 against the specification and has accepted them for examination. The amendments to the claims disclose language to overcome possible 35 USC 101 Rejections, the use of equity investments, and further defining the loss reduction fund.

Response to Arguments

3. Applicant's arguments filed March 23, 2009 have been fully considered but they are not persuasive. The Applicant argues: Lange is directed to binary options and does not disclose or suggest a plurality of at least three holders of equity investment instruments, where the holders that incur losses are determined according to a loss threshold mechanism, and further where the holders incurring losses are reimbursed from the loss reduction fund and that reimbursement either depletes the loss reduction fund, or all losses incurred by holders are reimbursed from the fund. The Examiner disagrees.
4. Regarding the argument that Lange does not disclose a plurality of holders, the Examiner cites paragraph 234, "the ability to provide diversification of credit risk among all the traders", as discussed on page 3 (paragraph 2) in the office action mailed November 25, 2008.
5. Regarding the argument that Lange does not disclose the use of equity investment instruments: see Lange paragraph 382, "Options on equities and equity indices have been one of the more successful innovations in the capital markets. Currently, listed options products exist for various underlying equity securities and indices and for various individual option series."
6. Regarding the argument that Lange does not disclose, "where the holders that incur losses are determined according to a loss threshold mechanism", the term 'loss threshold mechanism' is defined very broadly in the specification. See page 5 of the specification defining a loss threshold mechanism, "the invention triggers a loss

threshold mechanism whereby the system designate a given percentage or dollar amount that represents an amount of loss sustained by all system participants with a loss." Additionally, the specification discloses a broad determination of determining the reimbursement for losses. See page 4 of the specification defining the invention as a whole, "In one embodiment, losses greater than a threshold level... are reimbursed from the fund and losses less than the threshold level are absorbed by the individual investor. In another embodiment, losses less than a threshold level are reimbursed from the fund and losses greater than the threshold level are absorbed by the individual investor." Additionally, pages 5-6 of the specification shows another embodiment of the invention. The Examiner suggests possibly narrowing this feature down to a specific embodiment of the loss threshold mechanism (as discussed in the interview held on February 18, 2009).

7. Regarding the argument that Lange does not disclose, "holders incurring losses are reimbursed from the loss reduction fund and that reimbursement either depletes the loss reduction fund, or all losses incurred by holders are reimbursed from the fund."

This statement merely suggests that there is a fund that reimburses some or all investors who have incurred losses. Lange discloses that investors are reimbursed in paragraphs 27 and 34, as stated in paragraph 8 on pages 5-6 in the office action mailed on November 25, 2008. Lange discloses that it is well known in the art that member brokers/traders can hedge their own portfolio, thus reimbursing themselves for any losses, in paragraphs 9 and 22. Additionally, Lange discloses the use of hedge funds and other risk allocation services in paragraph 34. Furthermore, Lange discloses a

method of providing a loss reduction fund, where the total losses do not exceed the total value of the fund, see paragraphs 51, 53 and 55.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-5, 7, 8 and 11-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Lange (US 2002/0147670 A1).

10. Re Claim 1, Lange discloses: identifying a plurality of holders of investment instruments in figure 4 (element 267) and paragraph 234; equity investment instruments in paragraph 382; investment instruments of each holder are diverse with respect to that of other holders in figure 4 (element 266) and paragraphs 89 and 234; sharing risk in paragraph 46; reflecting diverse industry sectors is noted to be well known in the art in figure 4 (element 263) and paragraph 236; aggregating premiums (at least partially by the holders) to form a loss reduction fund (hedge fund) and determining losses incurred by holders in paragraph 27 and 34; determining which of a plurality of holders incurred a loss in the respective investment instruments at a predetermine time wherein some holders incur a loss (may be different values) and others do not in paragraph 12 (some

lose, others win); reimbursing at least a portion of the losses in the Abstract and paragraphs 1-5; and, where some holders may be reimbursed and other holders may not in paragraph 37 (some get reimbursed while other pay)—see also paragraphs 9, 22, 27, 34, 52, 53 and 55.

11. Re Claims 2 and 4, Lange discloses that the reimbursements are from a loss reduction fund and the premiums are determined as a percentage of the investment price in paragraphs 5-7.

12. Re Claim 3, Lange discloses that the reimbursements are from a fund other than the loss reduction fund in paragraph 8.

13. Re Claim 5, Lange discloses that the investment instrument price is a current trading price at the time the premiums are aggregated in paragraph 2.

14. Re Claim 7, Lange discloses that the investments instruments can be within the same category (or group) in paragraph 44.

15. Re Claim 8, Lange discloses that the investment categories include risk in paragraph 292.

16. Re Claims 11 and 12, Lange discloses that none of the plurality of holders are reimbursed for a loss that is less than the threshold loss and that the portion of the loss that is reimbursed begins at the threshold loss in paragraphs 8-12, 547 and claim 127.

17. Re Claim 13, Lange discloses that the threshold loss is a percentage value in paragraphs 41, 43, 297, 328, and 335.

18. Re Claim 14, Lange discloses that the threshold loss is a dollar value in paragraph 547.

19. Re Claims 15 and 16, Lange discloses that all of the plurality of holders are reimbursed for a loss that is less than the threshold loss and none are reimbursed if the loss is greater than the threshold loss in paragraphs 33, 965 and 983.
20. Re Claim 17, see the rejection of claims 15 and 13 above.
21. Re Claim 18, see the rejection of claims 15 and 14 above.
22. Re Claim 19, Lange discloses that the plurality of holders experiencing the largest percentage of loss receive the largest percentage of loss reimbursement in the Abstract. See also the rejection of claim 13 above.
23. Re Claim 20, see the rejection of claim 13 above.
24. Re Claim 21, Lange discloses creating a pool of a plurality of loss reduction funds in paragraphs 34 and 1044-1048.
25. Re Claim 22, Lange discloses reimbursement to the holder from the pool in paragraphs 36 and 506.
26. Re Claim 23, see the rejection of claim 3 above.
27. Re Claim 24, Lange discloses various time frames for different loss reduction funds in paragraph 110.
28. Re Claim 25, see the rejection of claim 22 above.
29. Re Claim 26, Lange discloses allocating risk through risk capital allocation (the use of insurance to cover the loss not covered by the fund) in paragraphs 26 and 29.
30. Re Claim 27, Lange discloses redistributing profit in paragraph 1392.
31. Re Claim 28, see the rejection of claims 1, 4, 5, and 17 above.
32. Re Claim 29, see the rejection of claims 1, 4, 5, and 13 above.

Claim Rejections - 35 USC § 103

33. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

30. Claims 6, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lange in view of Champion (US 5,126,936 A).

31. Re Claim 6, the Applicant discusses that the investment instruments are selected from a group including stocks, bonds, futures, options, derivatives, funds and trusts. Lange discloses that investments, "include (but not limited to) innovations and implementations of futures securities' in the Abstract. Lange also discloses the information in Claim 1. Lange does not specifically disclose each of stocks, bonds, futures, options, derivatives, funds and trusts. Champion teaches the use of each of these in the Background of the Invention section under column 1 (lines 15-49). Therefore it would have been obvious to a person having ordinary skill in the art the time the invention was made to modify Lange in view of Champion to offer diverse investment choices.

32. Re Claim 9, Lange discloses the information in claim 7. Lange also discloses that the investment categories include a form of diversification in paragraph 6. Lange does not specifically disclose the use of the word beta. Champion teaches that the

investment categories include beta in the column 2 (lines 12-28). Therefore it would have been obvious to a person having ordinary skill in the art the time the invention was made to modify Lange in view of Champion to include investment diversification to limit the impact of the business cycle on stock choices.

33. Re Claim 10, Lange discloses the information in claim 7. Lange does not specifically disclose the use of SIC, NAICS, securities indexes and HOOVERS. Champion teaches the use of these in the Abstract, and the Summary of the Invention under column 3 (lines 29-49). Therefore it would have been obvious to a person having ordinary skill in the art the time the invention was made to modify Lange in view of Champion to include various investment categories to offer a broad collection of separate funds directed to the diverse investment choices.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MURIEL TINKLER whose telephone number is (571)272-7976. The examiner can normally be reached on Monday through Friday from 6:30 AM until 3 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571)272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. T./
Examiner, Art Unit 3691

/Hani M. Kazimi/
Primary Examiner, Art Unit 3691